Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)
Approved for use through 07/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 34152

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/044,701	November 9, 2001

First Named Inventor: Hans-Ueli Roeck

Art Unit	Examiner
2615	Ping Lee

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 32923
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature

James M. Moore
Typed or printed name

216-579-1700
Telephone number

July 7, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[x] *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

The Examiner has continued to mischaracterize Killion '258, in particular Figs 9-12 and the corresponding text.

Killion '258 (Figs. 9-12) shows a fader from omnidirectional to directional microphone inputs based on the background noise SPL of the omnidirectional microphone. Col. 8, lines 39-49. This is based on the estimated noise level, not on the passage of time. This estimated noise level is provided by the logarithmic rectifier.

In addition, Killion '258 does this continuously in direct response, and only in response, to the noise SPL from the omnidirectional microphone. Col. 8, lines 39-49. There is no bi-level switching state that controls the operation of the fader.

Killion '258 fades in continuous response to a noise level. It does not fade over time in response to a bi-level switching state value.

The present invention may include, for example, "a filter unit, the filter unit having a timed response to a bi-level switching state value, said timed response controlling said changes" to the microphone-hearer transfer function parameters (claim 1); a "filter unit having a timed response to a bi-level switching state . . . [that] generates time-based transitions of parameters . . . in response to the bi-level switching state value" (claim 20); or "a filter unit having a timed response to said bi-level switching state value and initiating a change in at least one of the parameters in response to said timed response

from a momentary value to a desired value in a time-based manner" (claim 24).

Killion '258 and Killion '511 (which adds details to the logarithmic rectifier) do not have these elements either individually or in combination. It is respectfully submitted that all of the pending claims are allowable over Killion '258 and Killion '511.